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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Ryan Cox, individually and on behalf of all
other similarly situated;

Plaintiffs,

v.

CoinMarketCap OpCo, LLC; Binance Capital
Management Co., Ltd. d/b/a/ Binance and
Binance.com; BAM Trading Services Inc.
d/b/a Binance.US; Changpeng Zhao;
Catherine Coley; Yi He; Ted Lin; and Does I-
X;

Defendants.

Case No. 3:21-cv-08197-SMB
(*Honorable Susan M Brnovich*)

**MOTION TO DISMISS THE
COMPLAINT ON BEHALF OF
DEFENDANT BAM TRADING
SERVICES INC. D/B/A BINANCE.US;
MEMORANDUM IN SUPPORT**

Oral Argument Requested

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Defendant BAM Trading Services Inc. d/b/a Binance.US (“Binance.US”) moves to dismiss Plaintiff Ryan Cox’s Complaint pursuant to Fed. R. Civ. P. 12(b)(2) and 12(b)(6) because: (1) an exercise of personal jurisdiction in Arizona over Binance.US would violate due process and (2) Plaintiff fails to allege a claim against Binance.US.¹ The Motion is supported by the following Memorandum of Points and Authorities and Request for Judicial Notice.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Binance.US does not belong in this lawsuit. Plaintiff claims that the value of his HEX cryptocurrency was harmed by an artificially low rank of HEX compared to other cryptocurrencies on a ranking website of co-defendant CoinMarketCap. Plaintiff contends upon “information and belief” that the low rank occurred at the direction of co-defendant Binance.com (not Binance.US) after Binance.com purchased CoinMarketCap.

While the claims premised upon improper rankings against all defendants are fatally flawed, the inclusion of Binance.US in this lawsuit is particularly baffling. Binance.US is not alleged to have ranked HEX. Nor is Binance.US even alleged to be the parent of the ranking website CoinMarketCap. Rather, Plaintiff merely alleges that Binance.US is a “US Affiliate” of Binance.com (which it is not) and that the website of Binance.US directed unidentified potential investors to CoinMarketCap for information. Compl. ¶¶ 5(c), 164, 188. Such allegations do not support or explain the unnecessary inclusion of Binance.US. No legal or factual basis supports holding an alleged “affiliate” of a “parent” liable for the conduct of the parent’s subsidiary. And the allegation that unknown potential investors may have reviewed the website of Binance.US, may have then reviewed the rankings on CoinMarketCap, and may have then not purchased HEX when they otherwise would have is far too attenuated to include Binance.US in this lawsuit. Binance.US should be dismissed for two primary reasons.

¹ Pursuant to LR Civ 12.1(c), Michael Gleason (counsel for Binance.US) and Plaintiff’s counsel met and conferred in good faith regarding this motion on May 18, 2022. The parties have been unable to agree the pleading is curable by a permissible amendment.

Second, the allegations fail to state a claim against Binance.US. Plaintiff fails to allege the requisite elements for his claims premised on the allegedly low ranking of HEX against any defendant. And his attempt to link Binance.US to the “artificial” ranking by virtue of being either (1) an “affiliate” of a parent of a ranking site or (2) a company that pointed unidentified investors to CoinMarketCap, lacks legal and factual support.

II. ALLEGATIONS

CoinMarketCap is a “price-tracking website for cryptoassets” that ranks cryptocurrency. Compl. ¶¶ 5, 14, 89. Since September 27, 2020, HEX’s rank by CoinMarketCap remains “locked” at 201. *Id.* ¶¶ 90, 93-94. Plaintiff alleges that HEX should rank higher based on its performance compared to other cryptocurrencies but CoinMarketCap has refused to adjust the ranking. *Id.* ¶¶ 93-94, 106-111, 113.

Plaintiff alleges the devaluation of HEX was intentional after co-defendant Binance (referred to herein as Binance.com for clarity) purchased CoinMarketCap. Compl. ¶¶ 16-17, 20. Binance.com is the “largest cryptocurrency exchange in the world[.]” *Id.* ¶ 26. It “facilitates trades in cryptocurrency by providing a marketplace and facilities for bringing together buyers and sellers of cryptocurrency in exchange for Binance[.com] taking a fee for every transaction it facilitates.” *Id.* Plaintiff alleges a low ranking of HEX benefits Binance.com because: (1) HEX is not traded on the Binance.com exchange and Binance.com charges transaction fees to those

1 who trade cryptocurrencies on the Binance.com exchange (*id.* ¶ 69-70); (2) Binance.com issued
 2 its own cryptocurrencies which compete against HEX (*id.* at ¶¶ 99-101, 103-105); and (3)
 3 officers of Binance.com hold cryptocurrencies that compete against HEX (*id.* ¶¶ 130-132).

4 Binance.US (generally referred to as BAM, but referred to herein as “Binance.US”) is
 5 alleged to be the “US affiliate” of Binance. Compl. ¶ 5(c). The complaint attempts to blame
 6 Binance.US for the ranking of HEX on CoinMarketCap for two reasons. **First**, it alleges that
 7 the “veil” between CoinMarketCap and its parent, Binance.com, should be pierced to hold
 8 Binance.com accountable for any unlawful ranking and that the “veil” between Binance.com
 9 and its alleged “affiliate” Binance.US should be pierced to hold Binance.US accountable for
 10 CoinMarketCap’s ranking. Compl. ¶¶ 42, 67, 216.² **Second**, Plaintiff alleges that Binance.US
 11 directed unidentified investors to CoinMarketCap for “objective” information despite being
 12 “aware” of issues with CoinMarketCap’s rankings. *Id.* ¶¶ 164, 188.

13 Plaintiff purchased HEX prior to the “Suppression Period” and sold HEX after the
 14 “Suppression Period.” Compl. ¶¶ 2, 9-11. The lower ranking harmed Plaintiff by causing “HEX
 15 to trade at lower prices than it would have had the ranking not been locked” and directed “at
 16 least some individuals” who would have purchased HEX to instead purchase higher ranked
 17 cryptocurrencies. *Id.* ¶¶ 96, 114-116.

18 **III. DISMISSAL IS WARRANTED UNDER 12(B)(2)**

19 **A. Standard for a Motion To Dismiss Based on Lack of Personal Jurisdiction**

20 A defendant may move prior to trial to dismiss a complaint for lack of personal
 21 jurisdiction. Fed. R. Civ. P. 12(b)(2). “Where a defendant moves to dismiss a complaint for lack
 22 of personal jurisdiction, the plaintiff bears the burden of demonstrating that jurisdiction is
 23 appropriate.” *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004).

24
 25
 26 ² Binance.US interprets the allegations as a double veil-piercing theory but the allegations are
 27 unclear as the phrase “alter ego” is never used and the term “veil” is described in an apparent
 28 catch-all allegation in a single paragraph. The Complaint does not adequately set forth any legal
 theory to support Binance.US’s status as an alter-ego of other defendants and for this reason
 alone the claims should be dismissed. *See id.* ¶ 216; *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

When, as in this case, “no federal statute governs personal jurisdiction, the district court applies the law of the forum state.” *Freestream Aircraft (Bermuda) Ltd. v. Aero Law Grp.*, 905 F.3d 597, 602 (9th Cir. 2018). Here, Arizona's long-arm statute permits the exercise of jurisdiction to the full extent permissible under the United States Constitution. Ariz. R. Civ. P. 4.2(a); see also *LNS Enterprises LLC v. Continental Motors Inc.*, 464 F. Supp. 3d 1065, 1071 (D. Ariz. 2020), *aff'd* 22 F.4th 852 (9th Cir. 2022) (noting that the analysis for determining personal jurisdiction under Arizona law and federal due process are “identical.”) This means that “[f]or a court to exercise personal jurisdiction over a nonresident defendant, the defendant must have at least ‘minimum contacts’ with the relevant forum such that the exercise of jurisdiction ‘does not offend traditional notions of fair play and substantial justice.’” *Schwarzenegger*, 374 F.3d at 801 (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)).

B. Exercising Personal Jurisdiction Over Binance.US Violates Due Process Because Plaintiff Cannot Show Binance.US Has Minimum Contacts With Arizona

Under the minimum contacts standard, personal jurisdiction can exist in two forms: general and specific jurisdiction. *Cybersell, Inc., v. Cybersell, Inc.*, 130 F.3d 414, 416 (9th Cir. 1997). Here, Plaintiff fails to allege facts that support personal jurisdiction of either variety.

1. This Court Lacks General Personal Jurisdiction Over Binance.US

For general personal jurisdiction to exist, the defendant must have “continuous and systematic” contacts with the forum state. *Goodyear Dunlop Tires Ops., S.A. v. Brown*, 564 U.S. 915, 919 (2011) (quoting *Int’l Shoe Co., supra*, 326 U.S. at 317). The standard for general jurisdiction is an “exacting” one, as the defendant’s contacts must be so pervasive that they “approximate physical presence” in the forum state. *Schwarzenegger*, 374 F.3d at 801. Indeed, “only in an exceptional case will general jurisdiction be available anywhere other than the corporation’s place of incorporation and principal place of business.” *LNS Enterprises LLC*, 464 F. Supp. 3d at 1072 (internal quotations and citations omitted).

Here, Plaintiff does not identify any state of incorporation or principal place of business. In addition, Binance.US concurrently submits a Request for Judicial Notice showing that it is a Delaware corporation with its principal place of business in California. (RJN Ex. A.) Plaintiff

1 does not allege—and cannot show—that Binance.US, as a non-resident defendant, maintains
 2 such a substantial presence in the State of Arizona that it could be considered its home state. At
 3 best, Plaintiff can show that Binance.US operates in Arizona and has a money transmitter
 4 license from the Arizona Department of Financial Institutions. Compl. ¶¶ 46-47. However,
 5 “merely doing business in a forum does not a ‘home’ make . . .” for purposes of establishing
 6 general personal jurisdiction. *Hendricks v. New Video Channel Am., LLC*, No. 2:14-CV-02989-
 7 RSWL-SSx, 2015 WL 3616983, at *3 (C.D. Cal. June 8, 2015). Similarly, registering or being
 8 licensed to do business in a state does not establish general personal jurisdiction. *Wal-Mart*
 9 *Stores, Inc. v. LeMaire*, 395 P.3d 1116, 1118-1119 (Ariz. Ct. App. May 11, 2017). Indeed, to
 10 “confer general jurisdiction over every foreign corporation with a large commercial presence in
 11 Arizona” would “neither be fair, rational nor consistent with” the precedent on general
 12 personal jurisdiction. *Id.* at 1121-1122 (no general jurisdiction based on its business operations,
 13 despite the fact that Wal-Mart was the largest employer in Arizona in 2014, spent billions of
 14 dollars in Arizona, and operated hundreds of locations).³

15 Without facts to show that Binance.US has such a substantial presence in Arizona as to
 16 be tantamount to having its principal operations there, Plaintiff cannot establish that general
 17 personal jurisdiction exists. Given this conclusion, the Court must next consider whether
 18 personal jurisdiction exists under a specific jurisdiction theory, which is analyzed below.

19 **2. This Court Lacks Specific Personal Jurisdiction Over Binance.US**

20 The analysis of specific jurisdiction involves an inquiry into the relationship between the
 21 defendant, the forum, and the litigation. *Axiom Foods, Inc. v. Acerchem Int’l, Inc.*, 874 F.3d 1064,
 22

23
 24 ³ See, e.g., *Ocean Garden Products Inc. v. Blessings Incorp.*, No. CV-18-00322-TUC-RM, 2019 WL
 25 4736928, at *4 (D. Ariz. Sept. 27, 2019) [“Accordingly, the Court does not find that ADAB
 26 Mexico’s act of registering with the Arizona Corporation Commission and appointing an agent
 27 of service of process in Arizona constitutes consent to general personal jurisdiction in
 28 Arizona”]; *Leon v. Peterbilt Motors Co.*, No. CV-18-02122-PHX-ROS, 2019 WL 859580, at *3
 (D. Ariz. Feb. 22, 2019) [same]; *Harter v. Ascension Health*, No. CV-15-00343-TUC-RM, 2018
 WL 496911, at *3 (D. Ariz. Feb. 22, 2018) [same]; see also *Malcomson v. IMVU, Inc.*, No. 1 CA-
 CV 18-0596, 2019 WL 2305013, at *2 (D. Ariz. May 30, 2019) [citing *Wal-Mart* when holding
 business connections to Arizona based on online presence insufficient for general jurisdiction].

1 1068 (9th Cir. 2017). The Ninth Circuit requires satisfaction of three conditions for the exercise
2 of specific jurisdiction:

3 (1) The non-resident defendant must purposefully direct his activities or
4 consummate some transaction with the forum or resident thereof; or
5 perform some act by which he purposefully avails himself of the privilege
6 of conducting activities in the forum, thereby invoking the benefits and
7 protections of its law;

8 (2) the claim must be one which arises out of or relates to the defendant's
9 forum-related activities; **and**

(3) the exercise of jurisdiction must comport with fair play and substantial
justice, *i.e.* it must be reasonable.

10 *LNS Enterprises LLC*, 464 F. Supp. 3d at 1072 (emphasis added). Plaintiff bears the burden of
11 satisfying the first two prongs of the test. *Morrill v. Scott Fin. Corp.*, 873 F.3d 1136, 1142 (9th Cir.
12 2017). Only if Plaintiff meets those two prongs does the burden then shift to Binance.US to
13 show that the exercise of jurisdiction would not be reasonable. *Picot v. Weston*, 780 F.3d 1206,
14 1212 (9th Cir. 2015)

15 Here, Plaintiff alleges that Binance.US operates a website that “direct[s] users to
16 [CoinMarketCap’s] website for ‘objective’ information about the various cryptocurrencies
17 Binance and/or Binance.US offers for sale.” Compl. ¶ 164. Such allegations do not satisfy the
18 three elements, as shown below.

19 **a. Plaintiff Fails To Establish That Binance.US Purposefully Directed**
20 **Activities Toward Arizona**

21 For purposeful direction, Plaintiff must show that (1) a defendant committed an
22 intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant
23 knows is likely to be suffered in the forum state. *Calder v. Jones*, 465 U.S. 783, 789-790 (1984).

24 The Court need not address the merits of the allegations on the **first *Calder* element**,
25 *i.e.* Binance.US acted intentionally in directing users to CoinMarketCap’s website despite being
26 “aware” of issues with CoinMarketCap’s ranking. Although this allegation is baseless and
27 expressly denied, Plaintiff cannot show the final two *Calder* factors and cannot meet his burden.
28

With regard to the **second *Calder* element**, allegations of operating a website accessible to Arizonians do not establish that Binance.US expressly aimed its intentional act at Arizona. *See, e.g. Xcentric Ventures, LLC v. Bird*, 683 F. Supp. 2d 1068, 1072 (D. Ariz. 2010) (no specific personal jurisdiction over defendant based on defamatory online comments, in part, because defendant’s article “was not targeted at Arizona residents); *Cybersell, Inc., supra*, 130 F.3d at 420 (website “simply was not aimed intentionally at Arizona” under the *Calder* test); *Handsome Music, LLC v. Etoro USA LLC*, No. LACV 20-08059-VAP (JCx), 2020 WL 8455111, at *9 (C.D. Cal. Dec. 17, 2020) (A defendant operating a website that sells cryptocurrencies, among other things, which is merely accessible in California is insufficient to demonstrate such conduct was “expressly aimed” at California.)

Indeed, “the Ninth Circuit has consistently found that ‘a mere web presence is insufficient to establish personal jurisdiction.’” *Boehm v. Airbus Helicopters Inc.*, 527 F. Supp. 3d 1112, 1120 (D. Ariz. 2020), quoting *Holland America Line Inc. v. Wartsila N. Amer., Inc.*, 485 F.3d 450, 459 (9th Cir. 2007); citing *Cybersell, Inc., supra*, 130 F.3d at 418. A corporation does not purposefully avail themselves to a forum state by using a website to “passively target potential and existing customers across North America.” *Boehm, supra*, 527 F. Supp. 3d at 1120, citing *Holland, supra*, 485 F.3d at 460. Personal jurisdiction is not established based on allegations that a defendant is “operating a website that Arizonans could access, especially when Arizonans were not using the website disproportionately and were not singled out for solicitation.” *Malcomson, supra*, 2019 WL 2305013, at *3; *see also, Holland, supra*, 485 F.3d at 459-460; *Cybersell, Inc., supra*, 130 F.3d at 418.

With regard to the **third *Calder* element**, Plaintiff has failed to demonstrate that Binance.US knowingly caused Plaintiff harm in Arizona. Indeed, Plaintiff does not even allege that he himself had contact with Binance.US in Arizona, but rather that unspecified potential investors throughout the United States may have relied on Binance.US in recommending the ranking on CoinMarketCap. Such allegations do not demonstrate that Plaintiff’s claim arose out of harm that Binance.US knew was likely to be suffered in Arizona.

b. The Claim Does Not Arise Out Of Binance.US's Activity In Arizona

To show that his claims arose out of Binance.US's activity in Arizona, Plaintiff must demonstrate that his claim would not have arose "but for" the defendant's forum-related activities. *Ballard v. Savage*, 65 F.3d 1495, 1500 (9th Cir. 1995); *Terracom v. Valley Nat. Bank*, 49 F.3d 555, 561 (9th Cir. 1995). Activities that are deemed "too attenuated" do not satisfy the "but for" test. *Doe v. Am. Nat'l Red Cross*, 112 F.3d 1048, 1051 (9th Cir. 1997). In addition, the claim must arise out of "contacts that the 'defendant himself' creates with the forum State." *Walden v. Fiore*, 571 U.S. 277, 284-85 (2014). "[T]he plaintiff cannot be the only link between the defendant and the forum. Rather, it is the defendant's conduct that must form the necessary connection with the forum State that is the basis for its jurisdiction over him." *Id.* at 285.

Plaintiff fails to show that the alleged artificial devaluation of HEX would not have arose "but for" the Arizona activity of Binance.US. Again, he alleges that Binance.US contributed to the devaluation by directing unknown potential investors to CoinMarketCap for information and those investors opted not to purchase HEX (as opposed to countless other options) based on the ranking of CoinMarketCap. Compl. ¶¶ 164, 174, 181. Those "but for" allegations are "too attenuated" for **any** causation attributed to Binance.US—let alone do they establish the claim would not have arose "but for" activity in Arizona by Binance.US. Neither the allegedly suppressed value of HEX nor the directions on Binance.US's website are "tethered to [Arizona] in any meaningful way." *Pivot*, 780 F.3d at 1215. Indeed, none of Binance.US's "challenged conduct has anything to do with [Arizona] itself." *Id.* Plaintiff did not even rely on the rankings or Binance.US's website—he contends that others from unspecified areas (with no mention of Arizona) may have done so which impacted the value of HEX.

c. Exercising Specific Jurisdiction Over Binance.US Is Unreasonable

Plaintiff fails to establish the first two elements of specific jurisdiction so the Court need not inquire into the third element. Still, regarding the third element of the specific jurisdiction analysis, it would be unfair and unreasonable for personal jurisdiction to be found in the instance case. The Ninth Circuit considers seven factors in weighing the reasonableness of

exercising specific personal jurisdiction over an out-of-state defendant. *Harris Rutsky & Co. Ins. Services, Inc. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1132 (9th Cir. 2003).

The seven factors are: “(1) the extent of the defendants' purposeful interjection into the forum state's affairs; (2) the burden on the defendant of defending in the forum; (3) the extent of conflict with the sovereignty of the defendants' state; (4) the forum state's interest in adjudicating the dispute; (5) the most efficient judicial resolution of the controversy; (6) the importance of the forum to the plaintiff's interest in convenient and effective relief; and (7) the existence of an alternative forum.” *Harris, supra*, 328 F.3d at 1132.

Here, all seven factors show that exercising specific personal jurisdiction over Binance.US would be unreasonable.

Factor 1: purposeful interjection is evaluated in a manner akin to “purposeful direction,” which weighs heavily in Binance.US’s favor given the Complaint’s failure to allege that Binance.US purposefully directed its business to Arizona. *Core-Vent Corp. v. Nobel Indus. AB*, 11 F.3d 1482, 1488 (9th Cir. 1993) (Even though purposeful availment was satisfied, the Ninth Circuit held that “[s]ince the [out-of-state defendants’] contacts were attenuated, this factor weighs in their favor.”) **Factor 2:** Binance.US is not located in Arizona and faces a burden in defending this action in Arizona. *Terracom, supra*, 49 F.3d at 561 (“[T]he law of personal jurisdiction is asymmetrical and is primarily concerned with the defendant’s burden.”) **Factor 3:** given the limited contacts with Arizona alleged in the complaint and the fact that Binance.US is a Delaware corporation with its principal place of business in California, exercising personal jurisdiction in Arizona would conflict with the sovereignty of those states. **Factor 4:** Arizona’s interest in adjudicating the dispute is minimal because the Complaint fails to allege that any Arizona resident, including Plaintiff, has even used Binance.US to their detriment. *See e.g. Chandler v. Roy*, 985 F. Supp. 1205, 1214 (D. Ariz. 1997) (“A state maintains a strong and special interest in exercising jurisdiction over those who commit tortious acts *within its borders* and in providing an effective means of redress *for its residents* who are tortiously injured”)(emphasis in original). **Factor 5:** the efficiency of the forum is evaluated by looking “primarily at where the witness and evidence are likely to be located,” which favors Binance.US

1 because the Complaint only alleges a single witness, the Plaintiff, who actually resides in
 2 Arizona and does not allege that any evidence unrelated to Plaintiff would be located in
 3 Arizona. *Core-Vent Corp*, *supra*, 11 F.3d at 1489. **Factor 6:** the effectiveness and convenience of
 4 relief favors Binance.US because the Ninth Circuit does not “give[] much weight to
 5 inconvenience to the plaintiff” and Plaintiff’s preference for his “home forum” of Arizona
 6 “does not affect the balancing.” *Id.* at 1490. **Factor 7:** alternative forums exist in Delaware or
 7 California where Binance.US is incorporated or has its principal place of business.

8 *****

9 For all of the reasons described *supra*, this Court should not exercise personal
 10 jurisdiction over Binance.US.

11 **IV. DISMISSAL IS WARRANTED UNDER 12(B)(6)**

12 **A. Standard for a Motion To Dismiss For Failure to State a Claim**

13 On a motion to dismiss for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6),
 14 all allegations of material fact must be accepted as true and construed in the light most
 15 favorable to the nonmoving party. *Cabill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-338 (9th Cir.
 16 1996). However, a court is not required to accept as true a “legal conclusion couched as a
 17 factual allegation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*,
 18 550 U.S. 544, 555 (2007)). The complaint “must contain sufficient factual matter, accepted as
 19 true, to ‘state a claim to relief that is plausible on its face.’” *Id.* at 678. Absent facial plausibility,
 20 a plaintiff’s claims must be dismissed. *Twombly*, 550 U.S. at 570.

21 **B. Plaintiff Fails to Allege a Violation of the Commodity Exchange Act (Count 1)**

22 Plaintiff alleges a private cause of action under the Commodity Exchange Act (“CEA”)
 23 for market manipulation in connection with the sale of a commodity. As such, Plaintiff must
 24 allege (1) defendants possess an ability to influence market prices, (2) an artificial price existed,
 25 (3) defendants caused the artificial prices, and (4) defendants specifically intended to cause the
 26 artificial price. *Hershey v. Energy Transfer Partners, L.P.*, 610 F.3d 239, 247 (5th Cir. 2010).
 27 “Manipulation claims that sound in fraud,” as here, “are evaluated under the more stringent
 28

pleading requirements of Federal Rule of Civil Procedure 9(b).” *In re Tether & Bitfinex Crypto Asset Litig.*, No. 19 CIV. 9236 (KPF), 2021 WL 4452181, at *33 (S.D.N.Y. Sept. 28, 2021).

Here, Plaintiff alleges that Binance.US—along with all other defendants—violated the CEA by manipulating commodity prices and providing false, misleading, or knowingly inaccurate reports affecting the price of HEX. Compl. ¶ 163. The allegedly “false” statements related to HEX’s “artificially low” ranking by co-defendant CoinMarketCap. (*Id.* ¶¶ 162-163, 169-175.) Plaintiff does not allege that Binance.US provided any ranking (false or otherwise) of HEX. Rather, Plaintiff alleges that Binance.US violated the CEA by directing unspecified “users” to look to the ranking of CoinMarketCap for “objective information.” (*Id.* ¶¶ 164, 174, 181). These allegations are insufficient to state a claim against Binance.US for several reasons.

First, Plaintiff has not sufficiently alleged Binance.US’s ability to influence market prices. A plaintiff may demonstrate the ability to influence market prices “in various ways” including a defendant’s ability to exercise its own market power, exclude competition or fix prices, or possession of a dominant position in a commodity. *U.S. Commodity Futures Trading Comm’n v. Parnon Energy Inc.*, 875 F. Supp. 2d 233, 245 (S.D.N.Y. 2012). No such allegations exist against Binance.US. Allegations that Binance.US encouraged an unidentified group of “users” to rely on a separate website for rankings does not suffice.

Second, Plaintiff has not sufficiently alleged Binance.US caused artificial prices. Allegations of market manipulation based on “rank speculation” or that are “wholly conclusory” fail. *BMA LLC v. HDR Glob. Trading Ltd.*, No. 20-CV03345-WHO, 2021 WL 949371, at *6-*7 (N.D. Cal. Mar. 12, 2021); *Crosswood Magazine Inc. v. Times Books*, No. 96 Civ. 4550(SJ), 1997 WL 227998, at *2 (E.D.N.Y. May 5, 1997) (“Plaintiffs . . . have pleaded no facts indicating that [defendant] has the power to fix prices or exclude competition in the alleged relevant market.”); *Telectronics Proprietary, Ltd. v. Medtronic, Inc.*, 687 F. Supp. 832, 838 (S.D.N.Y. 1988)(dismissing conclusory market manipulation allegations). Here, conclusory “information and belief” allegations that Binance.US advised unknown “users” to rely on the rankings of a separate website CoinMarketCap, despite knowing of unspecified “issues” with the rankings (compl. ¶ 187), fail to explain how Binance.US caused artificial market prices for HEX.

1 **Third**, Plaintiff has not sufficiently pled that an artificial price existed. An artificial price
 2 is a price that “does not reflect basic forces of supply and demand.” *U.S. Commodity Futures*
 3 *Trading Comm’n v. Wilson*, 27 F. Supp. 3d 517, 533 (S.D.N.Y. 2014). “When determining if
 4 artificial prices exists, a court may consider the underlying commodity’s normal market forces,
 5 historical prices, supply and demand factors, price spreads, and also the cash market for the
 6 commodity at issue.” *In re Commodity Exch., Inc., Silver Futures and Options Trading Litig.*, No. 11
 7 Md. 2213(RPP), 2012 WL 6700236, at *12 (S.D.N.Y. Dec. 21, 2012). There are no allegations
 8 on any of these factors, so this element has not been sufficiently alleged.

9 **Finally**, Plaintiff has not sufficiently alleged an intent to defraud by Binance.US. “There
 10 is [] no manipulation without intent to cause artificial prices.” *In re Amaranth Nat. Gas*
 11 *Commodities Litig.*, 730 F.3d 170, 183 (2d Cir. 2013). “Th[e] final element of scienter can be pled
 12 by alleging facts [i] showing that the defendants had both the motive and opportunity to
 13 commit the fraud or [ii] constituting strong circumstantial evidence of conscious misbehavior
 14 or recklessness.” *In re Tether and Bitfinex Crypto Asset Litig.*, 2021 WL 4452181, at *34 (internal
 15 quotes omitted). Once again—Plaintiff’s allegation that Binance.US instructed unknown users
 16 to rely on information from a separate website does not sufficiently allege an intent to cause
 17 artificial prices for HEX. And additional generic allegations that all “defendants” acted
 18 intentionally are conclusory and insufficient. See, e.g. Compl. ¶ 191.

19 **C. Plaintiff Fails to State a Claim for Strict Liability for Violation of the Commodity**
 20 **Exchange Act (Count 2)**

21 Plaintiff also alleges a CEA claim against Binance.US premised on 7 U.S.C. § 2(a)(1)(B):

22 The act, omission, or failure of any official, agent, or other person acting for
 23 any individual, association, partnership, corporation, or trust within the scope
 24 of his employment or office shall be deemed the act, omission, or failure of
 25 such individual, association, partnership, corporation, or trust, as well as of
 26 such official, agent, or other person.

27 Here, Plaintiff alleges that Binance.US is liable for any CEA violation of CoinMarketCap
 28 because (a) Binance.com owns CoinMarketCap and (b) Binance.US is an “affiliate” of
 Binance.com. (Compl. ¶¶ 5(c), 199, 200.) Plaintiff alleges that liability stems from either a

1 “respondeat superior” theory (*id.* ¶ 215), or because “the corporate veil should be pierced
2 between Binance, Binance.US, and CoinMarketCap.com.” (*Id.* ¶ 216.) Plaintiff’s claim fails for
3 several, independent reasons.

4 **First**, as shown above, Plaintiff fails to sufficiently allege an underlying CEA violation
5 so the §2(a)(1)(B) claim necessarily fails.

6 **Second**, Plaintiff’s allegations of respondeat superior against Binance.US are entirely
7 baseless. Section 2(a)(1)(B) is not a mechanism through which a parent can be held liable for
8 actions of a subsidiary—nor one through which the alleged “affiliate” of a parent can be held
9 liable for the actions of a parent. *In re Nat. Gas Commodity Litig.*, 337 F. Supp. 2d 498, 515
10 (S.D.N.Y. 2004)(section 2(a)(1)(B) is “used as the doctrine of respondent superior has
11 traditionally been applied—to hold employers liable for the wrongs of their employees in
12 certain situations” and not to hold “corporate parents . . . liable for the actions of their
13 corporate subsidiaries.”) To be clear, Binance.US is **not** an affiliate of Binance.com and no
14 factual allegations indicate otherwise. But even accepting as true the conclusory allegation that
15 Binance.US is the “US affiliate” of Binance.com, no basis of liability exists under § 2(a)(1)(B)
16 against an alleged affiliate of a corporation whose subsidiary allegedly violated the CEA.

17 **Finally**, Plaintiff cannot hold Binance.US liable for CoinMarketCap’s ranking under a
18 “veil piercing” theory. “It is a general principle of corporate law deeply ‘ingrained in our
19 economic and legal systems’ that a parent corporation . . . is not liable for the acts of its
20 subsidiaries.” *Andrich v. Navient Solutions Inc.*, No. CV-18-02766-PHX-SMB, 2020 WL 1508449,
21 at *7 (D. Ariz. Mar. 30, 2020) (Brnovich, J.), quoting *U.S. v. Bestfoods*, 524 U.S. 51, 61 (1998);
22 *Chapman v. Field*, 602 P.2d 481, 483 (Ariz. 1979) (“Under Arizona law, corporate status will not
23 be lightly disregarded.”) The exception to this principle is alter ego liability. Alter ego status
24 exists “‘when there is such unity of interest and ownership that separate personalities of the
25 corporation and owners cease to exist.’” *Rodriguez v. Whole Foods Market Inc.*, No. CV-18-08301-
26 PCT-SMB, 2019 WL 3220538, at *3 (D. Ariz. July 17, 2019) (Brnovich, J.) quoting *Dietel v. Day*,
27 492 P.2d 455, 457 (Ariz. Ct. App. 1972). A plaintiff “must prove both (1) unity of control and
28 (2) that observance of the corporate form would sanction a fraud or promote injustice.” *Id.*

1 quoting *Gatecliff v. Great Republic Life Ins. Co.*, 821 P.2d 725, 728 (Ariz. 1991). “Unity of control
 2 occurs when a parent exerts ‘substantially total control over the management and activities’ of
 3 its subsidiary.” *Id.* “Substantially total control” can be shown by, among other things: “stock
 4 ownership by the parent; common officers or directors; financing of subsidiary by the parent;
 5 payment of salaries and other expenses of subsidiary by the parent; failure of subsidiary to
 6 maintain formalities of separate corporate existence; similarity of logo, and plaintiff’s lack of
 7 knowledge of subsidiary’s separate corporate existence.” *Id.* “To be held responsible for
 8 actions of its subsidiary, the parent must actually exercise this control so that the subsidiary
 9 becomes ‘a mere instrumentality.’” *Id.* quoting *Taeger v. Catholic Family & Cmty. Servs.*, 995 P.2d
 10 721, 733-34 (Ariz. Ct. App. 1999). “[C]onclusory allegations of alter ego status are insufficient
 11 to state a claim because a plaintiff must allege specifically the facts and elements of an alter ego
 12 claim.” *Id.* quoting *Morgan v. Freightliner of Az LLC*, No. CV-16-00498-TUC-CKJ, 2018 WL
 13 3957745, at *4 (D. Ariz. Aug. 17, 2018)(citation and internal quotations omitted).

14 Here, Plaintiff would need to somehow pierce two separate “veils” to hold Binance.US
 15 liable for any CEA violation of CoinMarketCap. Plaintiff alleges Binance.com (not Binance.US)
 16 is the “parent” of CoinMarketCap—so he initially must pierce CoinMarketCap’s veil to reach
 17 Binance.com. He then alleges Binance.US is the “US affiliate” of Binance.com (which it is
 18 not)—so he must then pierce Binance.com’s veil to somehow hold an Binance.US liable for
 19 that alleged actions of Binance.com’s subsidiary CoinMarketCap. The law does not support
 20 such a double veil piercing theory. Nor do the factual allegations. No allegations address any of
 21 the alter ego requirements for piercing the corporate veil of CoinMarketCap to reach
 22 Binance.com. Likewise, Plaintiff has pled no facts sufficient to state any claim premised on
 23 piercing Binance.com’s corporate veil to reach Binance.US. Plaintiff does not even allege a
 24 parent-subsidary relationship, which it is not, but rather that Binance.US is an “affiliate” of
 25 Binance. (Compl. ¶ 5(c).) Plaintiff alleges that “Binance and or Zhao own a significant portion
 26 of Binance.US” (*id.* ¶ 42) and that the Binance.US exchange site “supposedly operated” by
 27 Binance.US uses “Binance’s wallet, matching engine, and other technologies” and “offers a very
 28 similar interface and feature set” as the international exchange site operated by Binance (*id.* ¶¶

41, 43). However, Plaintiff's allegations regarding partial ownership and similar website features are insufficient to support disregarding the separate corporate status of Binance.US.

Such insufficient claims premised on alter ego liability are properly dismissed at the 12(b)(6) stage. See *Andrich*, 2020 WL 1508449, at *7.

D. Plaintiff Fails to Allege an Arizona Consumer Fraud Act Violation (Count 3)

Plaintiff's third cause of action alleges that the Corporate Defendants—including Binance.US—violated the Arizona Consumer Fraud Act through alleged “suppression” of HEX via the rankings on CoinMarketCap.com.

“The elements of a private claim under the Arizona Consumer Fraud Act, A.R.S. § 44-1522, are a [1] false promise or misrepresentation, [2] made in connection with the sale or advertisement of merchandise, and [3] the plaintiff's consequent and proximate injury from reliance on such a misrepresentation; such reliance need not be reasonable.” *Ferren v. Westmed Inc.*, No. CV-19-00598-TUC-DCB, 2021 WL 2012654, at *4 (D. Ariz. May 20, 2021.) Plaintiff fails to sufficiently allege any of the three elements against Binance.US.

First, Plaintiff does not allege a false promise or misrepresentation. He simply recites the statutory elements. Compl. ¶ 225. But the complaint is devoid of *factual* allegations as to any misrepresentation by Binance.US. See generally, Compl. Third Cause of Action ¶¶ 224-235.

Second, Plaintiff does not identify any sales or advertisements of Binance.US—let alone any connected with a false promise or misrepresentation.

Third, Plaintiff does not allege any reliance on a misrepresentation by Binance.US—let alone any injury caused by his reliance. Plaintiff alleges that he sold HEX during the “suppression period” which could have been sold at a higher price had other investors not relied on the inaccurate HEX ranking of CoinMarketCap.com. Again—such allegations do not allege any misrepresentation by Binance.US which Plaintiff relied on.

At most, Plaintiff alleges that other unidentified people in unidentified locations may have relied on the rankings. That is insufficient to state a claim because the Plaintiff must be the one exposed to the alleged misrepresentation. See *Schellenbach v. GoDaddy.com, LLC*, 321 F.R.D. 613, 624 (D. Ariz. 2017) (“[reliance under the Act] must be based on the plaintiff's

actual exposure to the omission.”); *Sutter Home Winery, Inc. v. Vintage Selections, Ltd.*, 971 F.2d 401, 407 (9th Cir. 1992) (same); *Peterson v. Am. Express*, No. CV-14-02056-PHX-GMS, 2016 WL 1158881, at *10 (D. Ariz. March 23, 2016) (no claim under the Act where Plaintiff alleged that credit report stated inaccurate information; any deception was “suffered by third-party users of his credit report.”).

E. Plaintiff Fails to Allege a Consumer Fraud Claim Premised on Control Person Liability (Count 4)

Plaintiff attempts to allege a claim for “control person liability for violations of the Arizona Consumer Fraud Act” against all defendants other than CoinMarketCap. Plaintiff makes a conclusory allegation that all of these defendants “by virtue of their offices, stock ownership, agency, agreements or understandings, specific acts, or other means had the ability to exercise direct or indirect control over the management and activities of CoinMarketCap.com and its employees complained of herein.” (Compl. ¶ 238.)

First, the claim has no legal basis. The Consumer Fraud Act does not provide for a claim based on “control person” liability alone. Arizona courts have only considered “control person” liability under the Consumer Fraud Act if connected with an alleged securities violation. *See, e.g. Kingsley Capital Management, LLC v. Sly*, No. CV-10-02243-PHX-NVW, 2013 WL 3967615, at *10 (D. Ariz. Aug. 2, 2013) [Considering “control person liability” pursuant to A.R.S. § 44-1999(B)]; *In re American Southwest Mortg. Litigation*, No. CIV 89-462 TUC-RMB, CIV89-471-TUC-RMB, 1991 WL 164473, at *3-*4 (D. Ariz. Aug. 14, 1991) [same].⁴

Second, even if the Consumer Fraud Act had a “control person liability” provision, Plaintiff fails to allege facts demonstrating that Binance.US qualifies as a “control person” over

⁴ And for good reason – control person liability is only applied in securities claims when authorized via statute. *See, e.g.* A.R.S. § 44-1999(B) (authorizing control person liability for securities violations); 15 U.S.C.A. § 78t (same); 15 U.S.C.A § 77o (same); *No. 84 Employer-Teamster Joint Council Pension Trust Fund v. America West Holding Corp.*, 320 F.3d 920, 945 (9th Cir. 2003) (“In order to prove a prima facie case [for control person liability] under Section 20(a), a plaintiff must prove: (1) a primary violation **of federal securities law** and (2) that the defendant exercised actual power or control over the primary violator”) (emphasis added) (internal quotations omitted).

the ranking of CoinMarketCap. Plaintiff repeats his allegations from his second cause of action that Binance.US is a U.S. “affiliate” of CoinMarketCap’s parent Binance.com (Compl. ¶¶ 240-242). For the same reasons set forth in addressing the respondeat superior theory, however, such allegations are insufficient to hold Binance.US accountable as a “control person” of CoinMarketCap. *See supra* § IV(C).

F. Plaintiff Fails to State an “Antitrust” Claim Against Binance.US

Plaintiff alleges unspecified “private causes of action for antitrust violations” of both federal and Arizona law against Binance.US. (Compl. ¶¶ 257-262.) Plaintiff does not identify which federal and Arizona antitrust laws are alleged to have been violated, how Binance.US violated any such law, or how Plaintiff experienced an antitrust injury caused by such a violation. Even if the Complaint had set forth the specific statutory basis for Plaintiff’s antitrust claims, the Complaint’s “conclusory allegation[s]” are insufficiently pled under *Twombly* because they are “unaccompanied by supporting facts.” *Rick-Mik Enterprises, Inc. v. Equilon Enterprises LLC*, 532 F.3d 963, 973 (9th Cir. 2008). As such, Plaintiff’s antitrust claim fails to comply with the pleading standards provided in *Twombly* of “provide the ‘grounds’ of his ‘entitle[ment] to relief’ [which] requires more than labels and conclusions[.]” *Twombly*, 550 U.S. at 555.

V. CONCLUSION

This Court should dismiss all claims against Binance.US due to lack of personal jurisdiction or failure to state a claim.

Dated: May 23, 2022

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